

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JARRET JAMES, Plaintiff : No. 3:13cv877
v. : (Judge Munley)
UNITED STATES OF AMERICA, GRIEVANCE COORDINATOR ERIKA FENSTERMAKER, FOOD SERVICE ADMINISTRATOR RYAN, CAPTAIN BRECKON, WARDEN RONNIE HOLT and REGIONAL COUNSEL SADOWSKI, Defendant : (Chief Magistrate Judge Carlson)

FILED
SCRANTON

MAY 17 2013

PER: *[Signature]*
DEPUTY CLERK

ORDER

AND NOW, to wit, this 11th day of May 2013, we have before us for disposition Chief Magistrate Judge Martin C. Carlson's report and recommendation (Doc. 5) and plaintiff's request to proceed *in forma pauperis* (Doc. 2). Chief Magistrate Judge Carlson recommends dismissing the individual defendants from Plaintiff Jarret James' *pro se* Federal Tort Claims Act ("FTCA") action pursuant to 28 U.S.C. § 2401 et seq. (Doc. 5). Specifically, Judge Carlson recommends dismissing the individual defendants because a court may not entertain a civil suit under the FTCA against "any employee of the government while acting within the scope of his office or employment . . ." 28 U.S.C. § 2679(b)(1). Judge Carlson, however, recommends plaintiff's action against the United States be allowed to proceed.

Objections to the report and recommendation were due by April 26, 2013. No objections to the report and recommendation have been filed and the time for such filing has passed. When deciding whether to adopt a report

and recommendation when no objections have been filed, we must determine if a review of the record evidences plain error or manifest injustice. FED. R. CIV. P. 72(b) 1983 Advisory Committee Notes ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record to accept the recommendation"); see also 28 U.S.C. § 636(b)(1); Sullivan v. Cuyler, 723 F.2d 1077, 1085 (3d Cir. 1983).

The court finds no plain error after careful review of the record. Accordingly, we shall adopt the report and recommendation as follows:

1. The Report and Recommendation of Chief Magistrate Judge Carlson (Doc. 6) is hereby **ADOPTED**;
2. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED** and the thirty (30) day administrative order (Doc. 6) is **VACATED**;
3. Plaintiff's FTCA claims against Defendants Fenstermaker, Breckon, Holt and Sadowski are **DISMISSED WITH PREJUDICE**. These defendants are terminated from this action;
4. Plaintiff's FTCA claim against the United States of America shall be allowed to proceed. The Clerk of Court is directed to issue a summons and serve the United States pursuant to FED. R. CIV. P. 4; and
5. The Clerk of Court is further directed to remand this case to Chief Magistrate Judge Carlson for further pretrial management.

BY THE COURT:

JUDGE JAMES M. MUNLEY
United States District Court